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FEB 4 1977

Mr. Joseph A. Cippollone  
Assistant United States Attorney  
409 Federal Building  
Public Square  
Cleveland, Ohio 44114

RE: United States v. Marshaw-Chemical Co.

Case No. (72-214(USDC ND Ohio))

Dear Joe:

Enclosed please find the final version of the Settlement Agreement and modified Consent Decree negotiated by the U.S. EPA and Marshaw Chemical Company. It is our desire that you request the court to enter the Agreement and modified Decree. Payment of the agreed amount of SEVENTEEN THOUSAND FIVE HUNDRED (\$17,500) dollars will take place at the time the Agreement is entered. I have talked with Joan Cloonan at the Department of Justice headquarters in Washington who agrees that, since this is a modified Decree public notice of the Decree will not be required prior to entry, however, the Decree will be published in the Federal Register for public notice purposes after entry.

Mr. Eben Cockley wishes to be contacted before your action in the above. I will appreciate your acknowledgement of this letter and any further action taken in this matter. Please also contact me if you should have any questions.

Very truly yours,

Sanford M. Stein, Attorney  
Enforcement Division

Enclosure

cc: Eben Cockley, Esq.  
Jones, Day, Reavis and Pogue

Robert P. Mooney, Esq.  
The Marshaw Chemical Co.

Joan Cloonan, Esq.  
Land Division  
Pollution Control Section  
Department of Justice

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

HARSHAW CHEMICAL COMPANY,  
Defendant

CIVIL ACTION NO. C72-214

HON. JUDGE W. K. THOMAS

CONSENT DECREE

In this case, the Court finds that:

The Complaint having been filed herein on March 2, 1972, and with plaintiff and defendant by their respective attorneys having consented, without trial of any issue of fact or law herein, prior to the entry of this Consent Decree, and without this Consent Decree constituting any evidence or admission by any party hereto with respect to any issue of fact or law herein:

NOW, THEREFORE, before the taking of any testimony, upon the pleadings and upon consent of the parties hereto, and without adjudication of any issue of fact or law, it is Ordered, Adjudged and Decreed as follows:

I

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto under Section 1345 of Title 28,

United States Code. The Complaint states a claim upon which relief may be granted against the defendant under Title 33 United States Code, Section 407.

## II

Defendant Harshaw Chemical Company is a subsidiary of Kewanee Industries Inc. and is a corporation licensed to do business in the State of Ohio and is engaged in doing business at Elyria, Ohio, within this Eastern Division of the Northern District of Ohio.

## III

Defendant Harshaw Chemical Company maintains a manufacturing facility at Elyria, Ohio, which is engaged in producing chemical products.

## IV

### Definitions

As used in this decree:

A. "Daily average concentration" shall mean the average of all daily concentrations determined during the month. For those parameters monitored as a series of discrete grab samples taken at regular intervals throughout a day and analyzed separately, the daily concentration shall be the average of the concentrations of the discrete grab samples taken on any one day.

B. "Daily maximum concentration" shall mean the highest concentration appearing in any composite sample or in any average of discrete grab samples taken during any day of the month.

C. "Company" shall mean The Harshaw Chemical Company.

D. "Discharge" shall mean any flow of liquids or solids from the Company's Elyria, Ohio, facility into the navigable waters of the United States directly or via the sewerage system of the City of Elyria.

E. "Regional Administrator" shall mean the Regional Administrator for Region V of the Environmental Protection Agency, his successor, or his authorized representative.

F. "Concentration" shall mean the weight of any given material present in a unit volume of liquid and shall be expressed in units of milligrams per liter (mg/l).

G. "24 hour composite" shall mean a composite sample made up of at least six increments taken at regular intervals throughout the 24 hour period.

H. "Daily average loading" shall mean the numerical average of the daily loadings determined over the days analyses were made during a calendar month.

I. "Daily maximum loading" shall mean the highest loading occurring on any day of the month.

J. "Loading" shall mean the weight, expressed in pounds or kilograms, of a constituent in the Company's discharge.

TABLE I  
INITIAL EFFLUENT LIMITATIONS  
AND MONITORING PROGRAM

<u>Constituent</u>	<u>Daily Average on Monthly Basis mg/l</u>	<u>Daily Maximum mg/l</u>	<u>Type Sample</u>	<u>Measuring Frequency</u>	<u>Daily Average kg/day (lbs/day)</u>		<u>Daily Maximum kg/day (lbs/day)</u>	
Ammonia-N	250	500	24 hr comp	Weekly	454	(1000)	903	(2000)
Cadmium (Total)	1	3	24 hr comp	Weekly	1.8	(4.0)	5.5	(12.0)
Chromium (Total)	2	6	24 hr comp	Weekly	3.6	(8.0)	10.9	(24.0)
Copper (Total)	3	9	24 hr comp	Weekly	5.5	(12.0)	16.4	(36.0)
Lead (Total)	1	3	24 hr comp	Weekly	1.8	(4.0)	5.5	(12.0)
Nickel (Total)	2	6	24 hr comp	Weekly	3.6	(8.0)	10.9	(24.0)
Mercury (Total)	.004	.012	24 hr comp	Weekly	0.009	(0.02)	0.03	(0.06)
Zinc (Total)	2	6	24 hr comp	Weekly	3.6	(8.0)	10.9	(24.0)
Suspended Solids (Total)	400	800	24 hr comp	Weekly	727	(1600)	1454	(3200)
Oil and Grease	10	20	1 grab/24 hr	Weekly	18.2	(40.0)	36.4	(80.0)
pH (Standard Units)	4 - 12	--	6 measures/ 24 hr	Weekly	--	--	--	--
Temperature	--	--	6 measures/ 24 hr	Weekly	--	--	--	--
Flow	--	--	6 measures/ 24 hr	Weekly	--	--	--	--

when monitoring equipment  
is operational.

V

The provisions of this Decree shall apply to all discharges from the defendant's Elyria facility which flow to the Black River and the City of Elyria Sewerage System.

VI

Initial Effluent Limitations

It is recognized that the initial effluent limitations set forth in Table I may not be achieved by the Company in all instances. However, during the period from the date hereof until July 1, 1977, with respect to discharges to the Black River, the Company agrees to achieve the initial effluent limitations set forth in Table I 95% of the time and during the remaining 5% of the time the Company agrees that its discharges shall not exceed the highest effluent level recorded for each parameter reported to the United States EPA during the period of 48 months immediately preceding the date hereof.

Subject to the provisions of the preceding paragraph, the Company further agrees that from the effective date hereof until July 1, 1977, the effluent limitations and monitoring requirements in Table I shall apply to all discharges to the Black River of other than non-contact cooling water.

Beginning on the effective date of this Decree, and until diversion to the Elyria sewer system as required in

paragraph VII is accomplished, the Company shall monitor the non-contact cooling water discharges to the Black River, and the discharges from the City of Elyria sewerage system overflow located at Obitts Chemical Company.

The Company will exercise due diligence to obtain the repair and/or modification of its flow monitoring equipment to make it operational, and at all times when such equipment is operational the Company shall continuously monitor the flow and pH of all discharges limited in Table I.

#### VII

Treatment facilities to comply with the provisions of paragraph XI will be constructed and made operational in accordance with the following schedule:

Completion of final plans by January 2, 1977

Initiation of construction by February 1, 1977

Report of progress by March 1, 1977

Report of progress by May 1, 1977

Report of progress by June 1, 1977

Completion of construction and diversion to Elyria sewer system by July 1, 1977

Obtain operational level by August 15, 1977

#### VIII

The progress reports identified in the foregoing schedule of compliance will be submitted to the agencies listed

below and will indicate compliance or non-compliance with the schedule. In the event of non-compliance, the report of compliance or non-compliance. In the latter case, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled requirements.

United States Environmental Protection Agency  
Region V, Enforcement Division  
230 South Dearborn Street  
Chicago, Illinois 60604  
Attention: Chief, Compliance Section

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087

#### IX

Monitoring results obtained during the previous three months shall be summarized and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. The first report is due for the period ending March 31, 1974. Duplicate signed copies of these, and all other reports required herein, shall be submitted to the Regional Administrator and the State at the following address:

United States Environmental Protection Agency  
Region V, Enforcement Division  
230 South Dearborn Street  
Chicago, Illinois 60604  
Attention: Chief, Compliance Section

Ohio Environmental Protection Agency  
Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087



Whenever necessary to verify compliance with the provisions of this Decree, the Regional Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to, upon and through the Company's manufacturing facility; and may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required to be kept under this Decree, and sample any discharge by the Company. This paragraph shall not be construed in derogation of any authority of the Regional Administrator or his authorized representative pursuant to any other provision of law and regulations.

X

On and after August 15, 1977, all discharges by the Company to the City of Elyria sewerage system shall meet the requirements of the City of Elyria's Ordinance No. 73-18 as presently in force or as hereafter amended or superseded and pretreatment standards promulgated pursuant to Section 307(b) of the Federal Water Pollution Control Act, as Amended (33 U.S.C. § 1317(b)).

XI

All sampling and analyses shall be performed according to either Methods for Chemical Analysis of Water and Wastes, April 1971, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, 1014 Broadway, Cincinnati, Ohio, 45202, or to the Standard Methods for the Analysis of Water and Wastewater, 13th Edition, 1971, American Public Health Association, New York, New York 10019, or subsequent revisions thereof.

## XII

Should the Company be delayed in the commencement or completion of the construction of any of the waste treatment facilities to comply with the provisions of this Decree, without fault of the Company, and by circumstances beyond its control, the Company may apply to this Court and upon a satisfactory showing, the time fixed for completion may be extended by this Court for a period equivalent to the time lost by reason for such delay.

## XIII

The Company shall make no discharge or deposit of sludge or other byproducts of waste treatment facilities from its Elyria facility into the Black River but shall dispose of such materials in such a place and manner that neither the materials nor any runoff therefrom will enter the Black River.

## XIV

This Decree is not and shall not be construed to be a National Pollutant Discharge Elimination System Permit. This Decree shall in no way relieve the Company of its obligation to comply with any other local, State or Federal requirements in any way related to the subject matter of this Decree, nor authorize any other discharge from the Company prohibited by law, including without limitation the provisions of the Federal Water Pollution Control Act as it may be amended from time to time.

## XV

The provisions of the Decree shall apply to and be binding upon the parties to this action, their officers, agents, servants, employees, successors and assigns, and upon all those in active concert or participation with them who receive actual Notice of this Decree by personal service or otherwise.

## XVI

Either party may apply for cause (including but not limited to changes in any regulatory standards and/or limitations which would apply but for this Decree) to this Court for further orders and directions as may be appropriate.

## XVII

This Decree shall remain effective and in full force only until 180 (one hundred eighty) days from the date on which all actions required in paragraph VII are achieved.

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United States District Judge

APPROVED AND CONSENTED TO:

THE UNITED STATES OF AMERICA,

Plaintiff

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Frederick M. Coleman  
United States Attorney  
Northern District of Ohio

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Joseph A. Cipollone  
Assistant United States Attorney  
Northern District of Ohio

THE HARSHAW CHEMICAL COMPANY,

Defendant

By

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Eben H. Cockley  
Jones, Day, Reavis & Pogue  
1700 Union Commerce Building  
Cleveland, Ohio 44115  
Attorney for Defendant